

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**  
**SOCIALIST REPUBLIC OF SRI LANKA**

Gama Arachchige Nandasena  
Jayawardana  
Neluwa.

**PLAINTIFF**

**C.A. Case No.936/97(F)**

**DC Galle Case No. 10745/L**

**Vs**

Tuduwe Kankanamlage Gunasena  
Welahena, Gulane  
Udawela  
Neluwa.

**Defendant**

**AND NOW**

Thuduwe Kankanamge Jayantha  
Kumara  
Millagaha Asala  
Uduwela, Neluwa.

**Substituted Defendant-Appellant**

**Vs**

Gama Arachchige Nandasena  
Neluwa.

**Plaintiff-Respondents**

**BEFORE**

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

**COUNSEL**

: D.M.G. Dissanayake with

With L.M.L.D. Bandara and

Minoli Soyza for the

Substituted Defendant-Appellant

Priyantha Alagiyawanna with

Asanka Ranawaka for the

Plaintiff-Respondent.

**ARGUED ON**

: 21<sup>st</sup> July, 2015

**DECIDED ON**

: 18<sup>th</sup> December, 2015

**Deepali Wijesundera J.**

The plaintiff respondent filed an action against the defendant appellant praying for a judgment that he is the owner of the property described in the schedule to the plaint and for ejectment of the defendant appellant from the said property and damages.

The plaintiff respondent stated that the said land was originally a Crown land which was given on a Crown Grant (No. 4689) which on 01/04/1921 to one H.S. Dissanayake after his death his children inherited the property, who by deed no. 1783 dated 20/09/1983 transferred the said property to the respondent appellant. The plaintiff respondent claimed that when he purchased the property the respondent appellant occupied a temporary house in the said land and agreed to vacate the said property after finding suitable accommodation but refused to keep his word later and began to dispute the plaintiff respondent's right causing damage to the said property.

The defendant appellant in the District Court has claimed prescriptive title to the said property. The defendant appellant in his answer in paragraph 9 has claimed that he came into the said land in 1976 but while giving evidence at the trial (page 176 of the proceedings) he has said that he came to the bare land which was unoccupied during the JVP insurgency in 1971. The defendant appellant in his statement to the Grama Niladhari marked as P3 states that he came into occupation in 1975.

The defendant appellants' learned counsel submitted that the connection between the original permit holder and the transferors of

deed no. 1783 and the mode of succession was not placed before court and that he only entered the land on 23/06/1985 and started cultivating the land. He further stated that the action in the District Court was instituted less than two years after he purchased the property in issue and the so called predecessors in title had no control over the subject matter.

The defendant appellant stated that in a *Rei Vindicatio Action* the action being an action in Rem heavy burden is cast on the plaintiff to prove his title and that the plaintiff can not rely on the defendant's poor title and that the defendant in a *Rei Vindicatio Action* has nothing to prove. Vide **Wanigaratne vs Juwanis Appuhamy 65 NLR 167, Dharmadasa vs Jyasena 1997 3 SLR 327.**

Citing the judgment in **Silva vs Bastian 15 NLR 132** the defendant appellant stated a Crown Grant by itself creates no presumption of the title of the Crown to the land which it conveys. He further submitted that the respondent has not led any evidence to show that either he or his predecessors in title had possessed the land and that he only had a mere paper title to the land.

The learned counsel for the plaintiff respondent submitted that the respondent produced the Crown Grant dated 01/04/1924 marked **P6** and the deed *no. 1783A* marked **P7** in the District Court in evidence though the appellants cross examined the respondent at length he could not disprove any of the documents, and that both documents were established. The defendant respondent stated that the appellant did not object to **P6 and P7** when he closed his case reading these two documents in evidence, and cited the judgment in **Sri Lanka Ports Authority and another vs Jogulinja Boat-East 1981 (1) SLR 18**. He further submitted that appellant did not ask a single question on the title of the respondent's properties and that the said evidence stand affirm.

On the issue of the appellant's claim of purported prescriptive title the respondent stated that the appellant has to justify his occupation of the property since the respondent had proved his title to the property, and cited the judgment in **Leisa vs Simon 2002 (1) SLR 148**.

The respondent stated that under *Sec. 3 of the Prescriptive Ordinance* to claim prescriptive title one has to prove ten years of adverse and independent possession of the property. **Sirajadeen vs Abbas 1994 2 SLR 365** in this judgment Justice G.P.S. De Silva, Chief Justice has analysed the mode of proof for prescriptive title.

The respondent in the District Court has marked **P6 and P7** to prove his title to the land in issue these two documents were read in evidence and no objections were taken up at the close of his evidence as stated in the judgment of Samarakoon, Chief Justice in his judgment in ***Sri Lanka Ports Authority and another vs Jogulinja Boad-East***. These two documents stand proof to the respondent's title to the said land. Since the respondent had proved his title to the land the burden shifts to the appellant to prove his prescriptive title.

In the case of ***Sirajudeen vs Abbas*** G.P.S. De Silva, Chief Justice has analysed the mode of proof of prescriptive title when the title of the plaintiff is proved the burden shifts to the defendant to establish a starting point for his acquisition of prescriptive title. In the instant case the defendant has failed to give an exact date he came into occupation of the land he has given three different dates in three different places. The point of acquisition of prescriptive title of the appellant is therefore contradictory.

The appellant has also failed to produce any documents to establish his possession of the disputed land.

The learned District Judge has carefully analysed the evidence and documents read in evidence before him and come to his finding I see no reason to allow the appeal of the appellant to set aside the said judgment.

For the afore stated reason the judgment of the learned District Judge delivered on 03/10/1997 is affirmed. The appeal of the appellant is dismissed with costs fixed at Rs. 25,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**